

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JAMES M. WEST (89-A-6906),

Plaintiff,

DECLARATION

vs.

05-CV-447

DOCCS,

Defendant.

DENETRA D. ROBERTS declares under penalty of perjury that the following is true and correct in accordance with 28 U.S.C. Sec. 1746:

1. I am an Assistant Attorney General, of counsel in this matter to Eric T. Schneiderman, Attorney General of the State of New York, attorney for Defendant New York State Department of Corrections and Community Supervision (“DOCCS”).
2. I offer this declaration in support of Defendant’s motion to dismiss.
3. Attached hereto as **Exhibit A** is a copy of the “Offer of Judgment” served on the Plaintiff on December 29, 2017.

Dated: January 18, 2018
Buffalo, New York

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York
Attorney for Defendant
BY:
/s/ Denetra D. Roberts
DENETRA D ROBERTS
Assistant Attorney General of Counsel
Main Place Tower
350 Main Street, Suite 300A
Buffalo, New York 14202

EXHIBIT A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JAMES WEST, 89-A-6906

Plaintiff,

-vs-

GLENN GOORD, et al.,

Defendants.

**OFFER OF JUDGMENT
PURSUANT TO FED.R.CIV.P. 68**

05-CV-447

Pursuant to Rule 68 of the Federal Rules of Civil Procedure, Defendant the New York State Department of Corrections and Community Supervision ("DOCCS"), hereby offers to allow Plaintiff, James West, to take a judgment against it in this action for a total sum of Five Hundred Dollars (\$500), inclusive of attorney's fees, expenses and costs in this action to the date of this offer.

This judgment shall be in full satisfaction of all claims (including federal and state claims) or rights Plaintiff may have to damages, or any other form of relief, arising out of the alleged acts or omissions of Defendant, all former Defendants, Glenn S. Goord, Stephan Bernardi, Thomas Poole, Thomas Eagan, Julie Dennis, Janice Henrich, Lisa Lauber, David Napoli, Donald Selsky, Lucien Leclaire, Jeffery Case, Ray Pabon and Joseph Keefe, and the State of New York, or any official, employee, representative, contractor or agent, either past or present, of the State of New York or any instrumentality or agency thereof, in connection with the facts and circumstances that are the subject of this action, or could have been brought in the above-captioned action.

This offer of judgment may only be accepted within 14 days after it is served.

This offer of judgment is made for the purposes specified in Rule 68 of the Federal Rules of Civil procedure and is not to be construed as an admission of liability by Defendant, or any

official, employee or agent of the State of New York, or any instrumentality or agency thereof; nor is it an admission that plaintiff has suffered any damages. By making this Offer of Judgement Defendant DOCCS does not admit any wrongdoing.

Acceptance of this offer of judgment will act to release and discharge Defendant DOCCS, as well as all former Defendants and the State of New York; their successors and assigns; and all past and present officials, employees, representatives, contractors and agents of the State of New York, and any instrumentality or agency thereof, from any and all claims that were or could have been alleged by Plaintiff in the above-captioned action.

Acceptance of this offer of judgment will operate to waive Plaintiff's rights to any claim for interest on the amount of the judgment.

By accepting this offer, Plaintiff agrees that payment of Five Hundred Dollars (\$500), within one hundred and twenty (120) days of the acceptance of this offer shall be a reasonable time for such payment, unless Plaintiff received medical treatment in connection with the underlying claims in this case for which Medicare has provided, or will provide payment in full or in part. If Plaintiff is a Medicare recipient who received medical treatment in connection with the claims in this case, the one hundred and twenty (120) day period for payment shall start to run from the date Plaintiff submits to counsel for Defendant a final demand letter from Medicare.

By acceptance of this offer of judgment, Plaintiff agrees to resolve any claim that Medicare may have for reimbursement of conditional payments it has made as secondary payer and a Medicare Set-Aside Trust shall be created, if required by 42 U.S.C. 1395y(b) and 42 C.F.R. §§ 411.22 through 411.26. Plaintiff further agrees to hold harmless Defendant, and all former Defendants and the State of New York, regarding any past and/or future Medicare payments or liens, presently known or unknown, made in connection with this matter.

If the provisions of New York Executive Law § 632-a apply to Plaintiff, and the payment hereunder constitutes “funds of a convicted person” under the Son of Sam Law, then the foregoing one hundred and twenty (120) day payment period shall be extended by an additional thirty (30) days to allow for compliance with that law.

By accepting this offer of judgment, Plaintiff agrees to execute and deliver to counsel for Defendant all necessary or appropriate vouchers and other documents requested with to process payment pursuant to Section 17 of the New York Public Officers Law.

The judgment shall contain and recite the terms and conditions set forth herein.

DATED: Buffalo, New York
December 28, 2017

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York
Attorney for Defendant

BY:



DENETRA D. ROBERTS
Assistant Attorney General of Counsel
Main Place Tower, Suite 300A
350 Main Street
Buffalo, New York 14202
(716) 853-8566
Denetra.Roberts@ag.ny.gov